

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

TENET HEALTHSYSTEMS NORRIS, INC.
d/b/a USC NORRIS CANCER HOSPITAL^{1[1]}

Employer

and

GLORIA QUIOAN

Case 21-UD-407

Petitioner

and

CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES ORGANIZING COMMITTEE^{2[2]}

Union

DECISION AND ORDER DISMISSING PETITION

The Petitioner seeks a deauthorization election for unit employees at the Employer's USC Norris Cancer Hospital facility ("USC Norris"). The Union and Employer contend that the petition should be dismissed because it seeks an election in a unit that is not coextensive with the parties' collective-bargaining agreement. Specifically, the Union and Employer contend that the USC Norris unit of employees has been merged with eight other units into one, state-wide unit, as is reflected in their collective-bargaining agreement; and that as a result, a UD petition can only be filed for an election among the employees in the contractual, state-wide unit. The Petitioner contends that since the Union was initially certified as the collective-bargaining representative of the single-facility USC Norris unit, a deauthorization election should be permitted in the same unit.

^{1[1]} The name of the Employer appears as amended at the hearing.

^{2[2]} The name of the Union appears as amended at the hearing.

Based on the entire record and current Board law, I agree with the position of the Union and Employer. As discussed below, the petition is not coextensive with the contractually defined state-wide unit, and consequently it has not been appropriately filed. Therefore, the petition is dismissed.

Facts

On January 12, 2007, the Union was certified in Case 31-RC-8620, as the exclusive bargaining representative of the Registered Nurses (“RNs”) unit^{3[3]} at the USC Norris facility. Thereafter, on August 20, 2007, the Employer and the Union negotiated and entered into a collective-bargaining agreement in which the USC Norris facility RN unit was merged into a state-wide unit comprised of RNs employed at nine of the Employer's facilities^{4[4]}. The collective-bargaining agreement contains a union

^{3[3]} The unit was described as "All full-time, part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Employer at its hospital facility located at 1441 Eastland Avenue, Los Angeles, California. Excluding, all other employees, confidential employees, physicians, residents, Central Business Office Employees (whether facility based or not) who are solely engaged in qualifying or collection activities or are employed by another Tenet entity, such as Syndicated Office Systems or Patient Financial Services, employees of outside registries and other agencies supplying labor to the Employer, already represented employees, regularly assigned charge nurses, guards, managers and supervisors as defined in the Act."

^{4[4]} The parties' Memorandum of Agreement states, in relevant part: "The Parties, California Nurses Association/National Nurses Organizing Committee ("Union") and Tenet Healthcare Corporation ("Employer"), ... reached agreement ("contract") covering bargaining unit Registered Nurses at the following facilities: Sierra Vista Regional Medical Center; San Ramon Regional Medical Center; Doctors Medical Center, Modesto; Community Hospital of Los Gatos; USC University Hospital; USC Norris Cancer Hospital; Desert Regional Medical Center; Twin Cities Community Hospital; Los Alamitos Medical Center."

security clause^{5[5]} which is currently being enforced in the state-wide, contractual bargaining unit.

On October 22, 2007, Petitioner filed a UD petition, seeking a deauthorization election in the unit comprised solely of the RNs at the USC Norris facility.

Analysis

Section 9(e)(1) of the National Labor Relations Act (the “Act”) provides that a petition for election may be filed with the Board seeking rescission of an agreement made between an employer and a labor organization pursuant to Section 8(a)(3). 29 U.S.C. § 151 *et seq.* These agreements, which require membership in a labor organization as a condition of employment, are commonly known as union security agreements. A petition to rescind the authority for such an agreement is known as a deauthorization or UD petition. As with other petitions filed with the Board, a UD petition must meet requirements regarding showing of interest, timing and filing procedures. Rules and Regulations of the National Relations Board, § 102.83, § 102.84.

In addition to procedural requirements, it is settled law that a proper UD petition must seek an election in a unit that is coextensive with the contractually defined unit. See *Illinois School Bus Co., Inc.*, 231 NLRB 1 (1977). The parties may agree to a bargaining unit which is different from the certified or recognized unit, as long as the unit is established by consensual agreement, see *Radio Corp of Am.*, 135 NLRB 980 (1962), and does not violate

^{5[5]} The Union Security Clause is set forth in the parties' collective-bargaining agreement, at Article 23: "(1) All Registered Nurses of the Facility covered by this Agreement as of the date of the execution shall, as a condition of continued employment with the Facility, become and remain members in good standing of the Association not later than the thirty-first (31st) day following the execution of this Agreement by tendering payment of the initiation fee to the Association and continuing their payment of periodic Association dues uniformly required. (2) As a condition of employment all Registered Nurses hired on or after the effective date of this Agreement shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing of the Association and tender to the Association the initiation fees and periodic dues that are the obligations of members."

any express statutory provisions or established Board policies. *Otis Hospital, Inc.*, 219 NLRB 164, 166 (1975).

The contract between the Employer and Union clearly and unambiguously states that the agreement covers a bargaining unit composed of RNs in the state-wide unit comprised of nurses at nine facilities, including the USC Norris facility.

Petitioner concedes that when she filed the petition, she was aware that the collective-bargaining agreement covered the multi-facility, state-wide unit, including the RNs at the USC Norris facility. Nevertheless, Petitioner argues that compelling reasons exist for a deauthorization election solely among the USC Norris facility unit RNs. Petitioner argues^{6[6]} that the contractual bargaining unit is repugnant to the rights guaranteed by the Act. In support of this assertion, Petitioner states that there is no history of collective bargaining at USC Norris and that USC Norris facility unit does not share a “community of interest” with the nurses at the other facilities described in the contractual bargaining unit. Petitioner cites four principal cases in support of these arguments: *West Virginia Pulp and Paper Co.*, 120 NLRB 1281 (1958); *The Great Atlantic & Pacific Tea Co., Inc.*, 153 NLRB 1549 (1965); *Utah Power & Light Co.*, 258 NLRB 1059 (1981); and *Metelectrical Testing Co.*, 331 NLRB 872 (2000).

The Petitioner's citations and contentions are misplaced as neither the analysis or the factual situations considered in those cases concern a UD petition situation. *West Virginia Pulp & Paper*, is a case dealing with an RM petition in which the Board considered

^{6[6]} Petitioner makes two other arguments that at least should be noted. She asserts that the Union used its power over the Employer via a neutrality agreement to frustrate the § 7 rights of USC Norris employees. This argument is not supported by any evidence. Petitioner also argues, without citing case support, that the correct unit for a deauthorization petition does not require that the bargaining unit be coextensive with the contractual unit, as the “only restriction” on deauthorization petitions is the one year election bar in § 9(e)(2) of the Act. The Board’s cases clearly contradict this argument. *Illinois School Bus.*, 231 NLRB 1 (1977).

whether supervisors should be included in the stipulated unit of employees. *The Great Atlantic & Pacific Tea Co., Inc.* and *Meteelectrical Testing Co.* are both RC cases where the Board initially considered whether the petitioned-for units were appropriate for collective-bargaining. Finally, *Utah Power & Light Co.*, concerns a decertification petition in which the Board determined that certain employees were "professional" employees which required that they be excluded from the appropriate bargaining unit.

In the instant UD case, the petition filed must seek an election in a unit that is coextensive with the contractually defined unit. *Illinois School Bus Co., Inc.*, supra; see also, *S. B. Rest. of Framingham, Inc., et al.*, 221 NLRB 506 (1975); and *S.B. Rest of Huntington, Inc., et al*, 223 NLRB 1445 (1976). The undisputed facts establish that the parties' contractually defined unit consists of Registered Nurses employed by the Employer at the nine facilities described in the parties' state-wide collective-bargaining agreement. Since the petition filed herein does not seek an election in the unit coextensive with the contractually-defined unit, the petition must, therefore, be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by March 4, 2008. The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,^{7[7]} but may not be filed by facsimile.

^{7[7]} To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and

Dated at Los Angeles, California, this 19th day of February, 2008.

/s/[James Small]
James Small, Regional Director
National Labor Relations Board
Region 21

accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.